



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,256	05/03/2002	Frank Joseph Garvey	148/291	8425

23638 7590 06/22/2006

ADAMS EVANS P.A.  
2180 TWO WACHOVIA CENTER  
CHARLOTTE, NC 28282

EXAMINER
----------

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/049,256	<b>Applicant(s)</b> GARVEY, FRANK JOSEPH	
	<b>Examiner</b> Gregory J. Strimbu	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14-19, 22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-19, 22 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/3/02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

In light of the applicant's comments in the appeal brief submitted April 24, 2006, the prosecution of this application has been reopened and the finality of the Office action of October 7, 2003 has been withdrawn so that the following rejection can be made of record.

### ***Drawings***

The drawings are objected to because the applicant has failed to use the proper cross sectional shading when showing a cross sectional view of the invention. For example, see figure 1 which shows a cross sectional view of the finger protector device but fails to use a cross sectional shading in accordance with MPEP 608.02. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

Art Unit: 3634

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flexible plastics joints being pre-biased at about 90 degrees relative to the member to which it is attached must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "[t]he present invention provides" on line 1 can be easily implied and therefore should be deleted. Additionally, the legal phraseology "means" on line 3 should be avoided. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

Claims 14-19, 22 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "flexible means" on line 3 of claim 14 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine

Art Unit: 3634

the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Recitations such as “a member” on line 8 of claim 14 render the claims indefinite because it is unclear if the applicant is referring to one of the members set forth above or is attempting to set forth another member in addition to the one set forth above. Recitations such as “a flexible plastics joint” on line 8 of claim 14 render the claims indefinite because it is unclear if the flexible plastics joints comprise part of the first and second flexible sections or if the flexible plastics joints are separate from the first and second flexible sections. Recitations such as “the member” on line 9 of claim 14 render the claims indefinite because it is unclear which one of the plurality of members set forth above the applicant is attempting to refer to. Recitations such as “creates or close” on line 2 of claim 16 are grammatically incorrect and confusing. Recitations such as “the door frame” on line 2 of claim 25 render the claims indefinite because they lack antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dutch Patent Publication 8501481. Dutch Patent Publication 8501481 discloses a finger protector device comprising first 4, second 5 and third 6 members, the second member

Art Unit: 3634

being connected to the first and third members by flexible means 9 and 10, respectively, the first member is arranged, in use to be mounted to a first surface 12 by a first mounting portion 2 connected to the first member by a first flexible section 7 and the third member is arranged, in use, to be mounted to a second surface 11 by a second mounting portion 3 connected to the third member by a second flexible section 8, in which relative movement of the first and second surfaces is possible and in which each of said mounting portions is attached to a member by a flexible plastics joint (not numbered, but comprising the structure of the flexible sections 7 and 8), which is pre-biased at about 90 degrees, as shown in figure 1, relative to the member to which it is attached, the flexible sections 7 and 8 provide a pivotal connection, the first surface 12 is door, the second surface 11 is a door frame, the first, second and third members are elongate members.

Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Dutch Patent Publication 8501481. Dutch Patent Publication 8501481 discloses a finger protector device comprising first 6, second 5 and third 4 members, the second member being connected to the first and third members by flexible means 10 and 9, respectively, the first member is arranged, in use to be mounted to a first surface 11 by a first mounting portion 3 connected to the first member by a first flexible section 8 and the third member is arranged, in use, to be mounted to a second surface 12 by a second mounting portion 2 connected to the third member by a second flexible section 7, in which relative movement of the first and second surfaces is possible and in which each of said

Art Unit: 3634

mounting portions is attached to a member by a flexible plastics joint (not numbered, but comprising the structure of the flexible sections 7 and 8), which is pre-biased at about 90 degrees, as shown in figure 1, relative to the member to which it is attached, the first surface comprises a door frame 11 and the second surface 12 comprises a door, the first, second and third member and the first and second mounting portions are elongate members, the finger protector device has a substantially uniform cross section, as shown in figure 1.

### ***Claim Rejections - 35 USC § 103***

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch Patent Publication 8501481 in view of Dutch Patent Publication No. 9301278. Dutch Patent Publication No. 9301278 discloses a finger protection device comprising mounting portions 2 which are thicker than the remaining portions of the protection device 1.

It would have been obvious to one of ordinary skill in the art to provide Dutch Patent Publication 8501481, with thicker mounting portions, as taught by Dutch Patent Publication No. 9301278, to increase the strength of the mounting portions.

### ***Response to Arguments***

Applicant's arguments filed April 24, 2006 have been fully considered but they moot in view of the new grounds of rejection.



Art Unit: 3634

***Conclusion***

**THIS ACTION IS NOT MADE FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
June 14, 2006